BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.04.2022
DELIVERED ON : 17.06.2022
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P.(MD)No.20056 of 2017
and
W.M.P.(MD).Nos.16315 of 2017

K.Ganesan (Died)

1.Eswari

2.Nanthisri ... Petitioners

(P-1 and P-2 are substituted vide Court Order dated 07.04.2022 in W.M.P.(MD).No.4445 of 2022 in W.P.(MD).No.20056 of 2017)

Vs

1.The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Represented by its Managing Director,
Bye Pass Road,
Madurai.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai)Limited,
Madurai Region,
Bye Pass Road,
Madurai.

3.The Deputy Manager (Provident Fund),
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Madurai Region,
Bypass Road,
Madurai.

4.The Administrator,
Tamil Nadu State Transport,
Corporation Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 600 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned letter of the fourth respondent in Letter No.26/B2/Tha Aa Po Ka Vu Oo Ni Po/2016-1344 dated 28.04.2016 and consequential proceedings of the third respondent in Ref: Tha Aa Po Ka/Madurai/Va Vai Nithi 8/1222 dated 15.11.2016, quash the same and consequently direct the respondents to pay monthly pension to the petitioner from 01.04.2007 with arrears and interest at 18% per annum by counting his entire service from his date of appointment to the date of the petitioner's superannuation in the first respondent corporation as actual, contributory, qualifying and pensionable service and by remitting the employer's contribution to the fourth respondent trust for the period from the date of the dismissal from service of the petitioner to the date of reinstatement.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.J.Senthil Kumaraiah

<u>O R D E R</u>

This Writ Petition has been filed to quash the letter dated 28.04.2016 and consequential proceedings dated 15.11.2016 and consequently direct the respondents to pay monthly pension to the petitioner from 01.04.2007 with arrears and interest at 18% per annum by counting his entire service from his date of appointment to the date of the petitioner's superannuation in the first respondent corporation as actual, contributory, qualifying and pensionable service and by remitting the employer's contribution to the fourth respondent trust for the period from the date of the dismissal from service of the petitioner to the date of reinstatement.

2. The petitioner died and his legal heirs are substituted as proposed petitioners vide Court order dated 07.04.2022 in W.M.P. (MD) No. 4445 of 2022.

3. The brief facts of the case are that the petitioner joined the first respondent Corporation as Conductor with effect from 11.06.1973 and was dismissed from service on 12.08.1974. The petitioner raised an Industrial Disputes in I.D.No.165 of 1987 and the Labour Court passed an award dated 17.02.1992 directing the respondents to reinstate the petitioner in service with continuity of service with 50% of back wages. As against the award, the respondents Corporation preferred Writ Petition in W.P. No.16635 of 1992 before the Principal Seat. The petitioner was paid wages under Section 17B of the I.D. Act. Subsequently, by order dated 23.08.2000, the Hon'ble Principal Seat has allowed the Writ Petition partly and deleted that portion of the award for payment of 50% backwages. Thereafter, the petitioner was reinstated in service with effect from 05.11.2000 and he attained superannuation on 31.03.2007. The petitioner filed Claim Petition in C.P.No.76 of 2013 claiming

salary for period from 17.02.1992 to 04.11.2000 and difference in salary from 04.11.2000 to 30.03.2007 and bonus, ex-gratia etc. By an order dated 31.07.2014, the Labour Court passed an order directing the respondents to pay Rs.2,66,347.05 as wages besides permitting the petitioner to withdraw Rs.43,139/- which remained as Court deposit. The petitioner has received the said amount but after retirement, the petitioner was not paid any pension. Since the petitioner is entitled to pension under the provisions of TNSTC Employees Pension Fund Rules with effect from 01.04.2007, but the respondents did not pay any pension without assigning any reason. The petitioner submitted representation dated 06.07.2016 followed by petition dated 04.11.2016 under RTI Act. In the reply dated 15.11.2016, it is stated that though the petitioner was paid with wages from September 1992 to November 2000, the PF contribution was not recovered from the back wages by the Transport Corporation and since back wages was paid without recovery of the PF contribution, hence the question of paying Employer's PF contribution does not arise. Therefore, the service period during which the PF contribution was not recovered, cannot be taken for calculating pension. The Deputy Manager of the respondent Corporation further stated that since there was no PF contribution on the part of the petitioner for the above said services, the same was excluded from the pensionable service and after such exclusion, the remaining service period is very short and the same was not sufficient enough to pay pension. The contention of the petitioner is that the third respondent furnished the copy of the order passed by the fourth respondent to the petitioner giving a direction to the Transport Corporation as to how the computation of pension can be made in the petitioner's case. On perusing the order of the fourth respondent dated 28.04.2016, the said order reads that the Transport Corporation had sought for clarification from the fourth respondent whether the pension can be paid to the petitioner. It was further stated that the period from the date of dismissal to date of reinstatement that is from September 1992 to November 2000 has to be taken as unqualifying service and accordingly the working of the pension payable to the petitioner has to be made. Aggrieved by the said action of the respondents in denying the pension on the ground that there was no provident fund contribution, the present Writ Petition has been filed. Since the continuity of service was granted to the petitioner, the respondents are bound to pay their employer's contribution of PF to the fourth respondent trust for the aforesaid period. Even assuming that there was no PF contribution from the date of dismissal to the date of award that is from 12.08.1974 to 17.02.1992, the petitioner received wages from 17.02.1992, the date on which the award was passed. Therefore, if the period from 17.02.1992 to 31.03.2007 was taken for calculation of pension, then the petitioner would be entitled to pension. Hence the petitioner prayed to grant the benefits.

4. The respondents have filed a counter stating that based on the order of the Labour Court in C.P.No.76 of 2013, the salary, difference of salary and bonus etc. amounting to Rs.2,66,347.05 (Rupees Two Lakhs Sixty Six Thousand Three Hundred and Forty Seventy and five paisa only) has to be paid to the petitioner. The petitioner is not eligible for pensionary benefits since he has not contributed the PF monthly contribution for the period from September 1992 to November 2000 which had been treated as non contributed period, as a result he is not eligible for the pensionary benefits. The PF Section had already informed the petitioner about the ineligibility to get pension, because of the Provident Fund monthly contribution has not been made by the petitioner, as per the Pension Rules, he is not eligible for monthly pension. The plea of the petitioner is that the non-employment period ought to be counted for arriving pensionable service is taken by the respondent Corporation properly but due to the non payment of monthly pension contribution, the petitioner is ineligible to the monthly pension. The respondents have stated in the counter that the averment of the petitioner is that the Hon'ble Court has held that once there is an award of reinstatement with continuity of service, the entire period of service from the date of appointment to the date of superannuation shall be taken for the purpose of calculating pension is partly acceptable because in addition to it, the monthly contribution for the entire period has to be remitted to the pension fund by the petitioner. Since the petitioner has not paid the monthly pension contribution, he is not eligible to the same. Hence the respondents prayed to reject the Writ Petition.

5. Heard Mr.A.Rahul, learned counsel for the petitioner and there is no appearance on behalf of the respondents.

6. In the earlier round of litigation between the parties, the Labour Court has granted reinstatement with continuity of service, however, 50% back wages was granted. The Corporation was aggrieved and they had preferred an writ petition and the Labour Court award was confirmed except the payment of 50% back wages. Therefore, now the order in existence is that the respondents ought to reinstate the petitioner with continuity of service and pay the terminal benefits. The claim of the petitioner is that the petitioner was reinstated with continuity of service. However, the respondents have not taken the period where the petitioner was not in employment. The petitioner claims that the said period ought to be taken into account for calculating the pensionable service. The claim of the respondents is that since the petitioner has not contributed the employees share to the provident fund, the petitioner is not entitled to the pension. The word “continuity of service” ought to be considered to resolve the issue. This Court in W.A.No.2302 of 2021 vide order dated 03.02.2022 is held as under:

"7. So far consequences thereof are concerned and as noted above that is the controversy in this appeal, this Court finds that, since the action of the Management of terminating the service of the workman is held to be illegal and it has attained finality, the same needs to be understood as the declaration by the competent authority about the termination in question being illegal for all purposes, with all consequences flowing therefrom. The order of learned Single Judge dated 15.03.2021 was to be complied with within a period of six weeks. No payment was made to the workman. The challenge in this appeal is principally on the ground, as noted in order dated 15.11.2021 and 01.12.2021 in substance is to the effect that, the consequence of the impugned order is that, the period during which the workman was out of employment would be required to be counted as pensionable service, which would stand in conflict with the Rules in that regard and to that extent, the impugned order needs to be modified.

8. On conjoint consideration of the above leads to the conclusion that, on the face of the approval petition of the appellant / Management qua the termination of service of the respondent / workman having been rejected by the competent authority by a speaking order and further the said order having been confirmed by this Court in writ petition and this writ appeal, the next question is, what would be the consequence thereof. Since learned Single Judge attempted to balance the equities between the parties and for that purpose concession was given on behalf of the workman that he forgoes the actual payment of arrears towards back wages for the said period, we find that, the said concession can not be stretched to the extent that the said period is to be counted as non pensionable service. The Management can not be heard contending that, in absence of any actual payment of arrears, there will not be any payment to Pension Trust Fund and that is how that period has to be excluded as non-pensionable service. We are of the view that the concession on behalf of the workman can not be understood to that extent. As noted in order dated 01 December 2021, at one stage, we had also thought of relieving the workman from that concession, however it would result in additional liability on *the public exchequer, therefore we have thought it proper not to do so. This is because, even if it would not have been on the basis of concession, but on the basis of adjudication by the competent court, it can not be said that the period during which the workman was not in actual employment will automatically be excluded from consideration as non-pensionable service. Once the action of the Management is held to be illegal, the said action is illegal for all purposes and for all consequences. In a given case, either Labour Court or the Writ Court, in the facts of the case may exercise discretion, on permissible parameters, of granting / not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant / Management. We make it clear that even in those cases, where back wages is not granted for valid reason, the very fact that the termination was held to be illegal, the period during which the workman had remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered / provided by the Court. Even with the aid of stipulation 10 e as quoted above, permitting the Management or the Pension Trust to exclude the said period as non pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No one can be permitted to take advantage of / benefited from his own wrong. The workman can not be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the Pension Trust would lead to this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties can not be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman".*

7. Wherein, it has been stated that the backwages was not granted, in order to meet the ends of justice, the continuity of service was granted only for the benefit to get pension. The said concession cannot be stretched to the extent that the said period

should be counted as non-pensionable service. In the present case, the employer contribution is available and the employee contribution alone was not contributed by deducting the same from the salary. If the employees contribution is not available, then the Corporation is bound to pay employer's contribution and pay pension from that amount. The amount would be meagre, even then the petitioner is eligible for the pension.

8. The petitioner was paid 17B wages, but it is not clear for which period it was paid. While calculating the PF period, the payment of 17B wages shall be taken into account.

9. Therefore, this Court directs the respondents to disburse the employer's contribution to the Pension Trust, however the 17B wages issue shall also be taken into account while calculating the contribution. Thereafter the Pension Trust is directed to disburse the pension as applicable based on the employer’s contribution alone. The respondents are also directed to pay the Provident Fund as stated supra. This order shall be implement within a period of six (6) weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner is not entitled to interest and the claim of the petitioner to grant interest is rejected.

10. With the above observations, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

Nsr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai)Limited,
Madurai Region,
Bye Pass Road,
Madurai.

3.The Deputy Manager (Provident Fund),
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Madurai Region,
Bypass Road,
Madurai.

4.The Administrator,
Tamil Nadu State Transport,
Corporation Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai - 600 002.

+1 CC to M/s.A. RAHUL, Advocate (SR-26373[F] dated 17/06/2022)

W.P.(MD)No.20056 of 2017
17.06.2022

RK 27.06.2022 : 7P/6C